

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE V. DURGA RAO, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.1012/Ind/2016**  
**Assessment Year 2010-11**

Shri Kamla Kant Sharma, House No.20, Chitragupt Nargar, Kotra Sultanbad, Bhopal (Appellant)	Vs.	ACIT 1(1), Bhopal (Respondent )
<b>PAN No.AXUPS7815A</b>		

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri M.K. Sharma,CA'
Date of Hearing	25.02.2019
Date of Pronouncement	28.02.2019

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2010-11 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-2 (in short 'Ld.CIT(A)'), Bhopal dated 08.06.2016 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 23.12.2011 framed by ACIT-1(1), Bhopal.

2. Brief facts of the case as culled out from the records are that the assessee is an individual and a salaried employee of the Madhya Pradesh State Government. Search u/s 132 of the Act was conducted at the residential premises of the assessee on 23.07.2009 along with search conducted in the case of Akshay Shakti Shiksha Evam Kalyan Samiti. Cash of Rs.5,62,000/- was found at his residence. Subsequently return was submitted in compliance to notice u/s 153A declaring income of Rs.3,56,258/- on 30.7.2010. During the course of assessment proceedings Ld. A.O confronted the assessee seeking information about the source of cash of Rs.5,62,000/-. Assessee pleaded that out of the alleged amount the cash of Rs.50,000/- belongs to Shri Anurag Sharma who is Vice President of Akshay Shakti Shiksha Evam Kalyan Samiti staying with him, Rs.15,000/- belongs to his brother in law Shri L.K. Pandey, Rs.30,000/- belongs to his father in law Shri M.S. Pandey, Rs.1.5 lakhs belongs to his wife and remaining amount was claimed to be cash in hand with assessee after withdrawal of Rs.7 lakhs from the bank account on 30.4.2009. Ld. A.O was not satisfied and relied on the preliminary statement of the above referred persons which could not support the submissions made by the assessee and treated the amount as unaccounted income of the assessee and assessed the income at

Rs.9,18,258/-. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed.

3. Aggrieved assessee is now in appeal before the Tribunal raising following grounds of appeal;

“1. That the Learned CIT (Appeals) has erred in law and on facts in confirming the addition of Rs.5,62,000/- to the total income of the appellant.

2. No addition can be made for a sum found during the search when the same can be properly explained at the time of search and afterwards, and also when it is duly supported by a proper cash flow statement.

3. That the appellant reserves the right to add, alter or amend the grounds of appeal before the appeal is decided, with the permission of Honourable Bench”

4. The Learned Counsel for the assessee submitted that the only addition made in this case is of Rs 5,62,000/- being cash found during search at the premises of the appellant. The addition was made for the only

finding that no satisfactory explanation was given about the cash found. However, your kind attention is drawn to the statement of Shri Kamlakant Sharma the appellant, at the time of search, where it has categorically stated that the sum of Rs 30,000/- found at the time of search belongs to Shri Mahima Shankar Pandey, Father-in-Law of the appellant, Rs 50,000/- belongs to Shri Anurag Sharma relative staying with him on the date of search, who is also vice-president of the society and Rs 15000/- belongs to Shri Laxmikant Pandey Brother-in-law of the appellant. The appellant in his statement also informed in reply to Ques-26 that Rs. 1,50,000/- belongs to his wife and the remaining cash belongs to him. He has also filed the confirmation of Shri Mahima Shankar Pandey and Shri Anurag Sharma & L.K. Panda during the Assessment Proceeding. In the given case it is important to note that the fact of cash belonging to the above mentioned person was also confirmed by the appellant and his wife in statement recorded u/s 132 at the time of search. It is also important to note that Shri Mahima Shankar Pandey, Shri Laxmikant Pandey and even Shri Anurag Sharma, all three people were staying on that day in the premises of appellant, being his relatives and their statements were also recorded during the search at the same premises. Despite the specific statement by appellant and his wife to the effect that Rs 15,000/-, 30,000/- and 50,000/-

belongs to their guest staying with them on the date of search, same was not accepted by the department for the reasons that;-

Smt. Vandana Sharma was specifically requested to state the cash if any kept in the house. In reply, Smt. Sharma stated cash of 3-4 thousand is kept in her purse.

The cash found was not found split in any manner so as to substantiate the explanation of Shri Kamla Kant Sharma after the recovery of the cash.

An appeal was filed before the CIT(A), in such appeal as well Commissioner appeals had had confirmed the addition made by the AO without any specific finding.

It was also surprising that the statement of all these three people were recorded on the same date and in the same premises, but the department has not raised any specific question about any cash kept in the premises belonging to them, despite the fact that on that date, cash was specifically explained by the appellant and his wife to search party in their statements u/s 132 of the Act. So far as the balance amount of cash is concerned, it is very well evidenced by the cash flow statement of the appellant and his

wife, which was also submitted before the Assessing Officer as per our written submission dated 30.11.2011 who has accepted the cash in hand as reflected in the Cash Flow statement, and had made no addition to income of Smt. Vandana Sharrna. Assessing Officer has not pointed out or found any defect in the cash flow statement and there is no finding in the assessment order to reject the cash flow statement and reason thereof, if any. The cash flow statement very well reflects cash in hand of Rs 3,19,175.06/- on 23.07.2009 (date of search) which is preceded by withdrawals of sum of Rs 700000/- from State Bank Of India on 30/04/2009 and this fact is not undisputed. The finding of learned AO in this regard as per para 7 of the order was that "*No evidence of the cash withdrawal from bank was given by the assessee*", which is factually incorrect as bank statement was part of written submission and examined by the Ld. AO" filed before him on 30.11.2011.

It is also important that the cash flow statement was prepared from 1/4/2003 - 31/3/2010 and the opening cash balance shown on 1/4/2003 is Rs 970/- only. In case of assessee, neither the A.O. had specifically rejected the cash flow statement nor he found any defect in it. The Ld. CIT(A) had not given any finding that the withdrawal of Rs 7,00,000/- was

incurred for any purpose other than explained by the assessee. Assessee has also placed reliance on the following judgments -

1) CIT v/s Margadarsi Chit Fund (P) Ltd. 1985 155 ITR 442 A P (Para - 7).

2) Moreshwar Mahadev Bhondve v/s Assistant Commissioner of Income Tax, Central Circle 1(2), Pune (Para- 4.10)

Therefore, there is no finding to reject the statement of appellant explaining availability of cash with the appellant. Since the facts were disclosed during the statement made u/s 132 itself, same cannot be denied without having any material or evidence to disprove such statement. It is important to note that in case of Smt. Vandana Sharma (wife of appellant) Ld. A.O. has accepted the cash now and cash in hand of Rs. 1,52,141/- on the date of search and therefore no addition in A. Y. 2010-11 was made by the Ld. A.O. in the hands of her. Therefore, addition of Rs 5,62,000/- in the hands of appellant is incorrect and illegal.

5. Per contra the Ld. Departmental Representative vehemently argued and supported the orders of both the lower authorities.

6. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is against the following findings of Ld.CIT(A) confirming the addition of unexplained cash of Rs.5,62,000/- found at the residential premises of the assessee during the course of search u/s 132 of the Act on 23.7.2009.

“4.6 I have considered the facts of the case and the written submissions of the appellant. The AO has based the addition mainly upon the discrepancies in the preliminary statement and concluding statements of the appellant recorded at the time of search. During assessment and during appeal, the appellant has reiterated his concluding statement. The appellant has explained the cash found at the time of search under two categories: cash of Rs. 50,000, 30,000 & 15,000 as belonging to Sh. Anurag Sharma (Vice president of the Askhay Shakti Shiksha Evam Society), father-in-law and brother-in-law respectively, and the remaining cash to be as per the cash-flow statement furnished by the appellant during assessment. No cash flow statement (CFS) was filed during appeal. However, in the written submissions, it has been stated that the CFS reflects cash-in-hand of Rs.3,19,175 on 23.07.2009 (date of search). The source of this cash-

in-hand has been further explained to be withdrawal of Rs. 7,00,000 from SBI made on 30.04.2009.

The assessee did not produce Sh. Anurag Sharma, Sh. M.P. Pandey and Sh. Laxmikant for examination by the AO. It is, therefore, held that the A.O. was justified to reject the explanation of the assessee regarding the receipt of Rs. 95,000/- from these persons. Further, no such statement was given by these three persons when they recorded their statements at the beginning of the search.

The total cash claimed to be received from the above persons is Rs.95,000/- leaving a balance of Rs.5,62,000 - 95,000 = 4,67,000. According to the appellant, as per the CFS, cash-in-hand of Rs.3,19,125 was available with him as on 23.07.2009. Thus, there still remains an unexplained difference of Rs. 1,47,875/-, (Rs. 4,67,000/- Rs. 3,19,125/-) and the explanation that the cash found at the time of search was out of cash withdrawal of Rs.7,00,000 from SBI made on 30.04.2009 nearly 3 months ago is not plausible.

Upon due consideration of the totality of facts as mentioned above, it is held that the assessee has not given a satisfactory explanation of

the cash found at the time of search. The A.O. is justified to treat the same as unexplained cash of the assessee and add it to the total income for the A. Y. 2010-11. The addition made by the A.O. is upheld.”

7. Before us Ld. Counsel for the assessee referring to the written submissions has strongly pleaded that the assessee has stated source of cash found at his residence during the course of search itself which comprises of the following;

S .No.	Particulars	Amount
1	Shri M.S. Pandey	Rs.30,000/-
2	Shri Anurag Sharma	Rs.50,000/-
3	Shri Laxmi Kant Pandey	Rs.15,000/-
4	Smt. Vandana Sharma (Wife)	Rs.1,50,000/-
5	Cash in hand (out of Rs.7,00,000/- withdrawn from bank)	Rs.3,17,000/-
	Total	Rs.5,62,000/-

8. After perusal of the assessment order wherein the details relating to the statements given by various persons during the course of search at the residential premises of the assessee, statements taken of the assessee and his wife, preliminary and final statements of other persons, we observe that the assessee has kept the same stand right from the statement given at the time of search.

9. Shri Anurag Sharma, Shri M.S. Pandey and Shri Laxmikant Sharma who were claimed to be the owners of cash of Rs.50,000/-, Rs.30,000/- and Rs.15,000/- respectively are close relatives of the assessee and were very much present at the assessee's residential premises at the time of search u/s 132 of the Act. Search team have not raised any specific question to these three persons about the alleged cash sum. Ld. CIT(A) did not accept the assessee's contention by merely stating that the assessee did not produce these three persons. Further during the assessment proceedings hand written letters of three persons were filed stating the fact that the alleged cash of Rs.95,000/- belonging to these persons. We are surprised to note that why the Ld.A.O refrained from calling these persons by issuing necessary notices if he was not satisfied with the confirmation letters filed by them.

10. In our considered view the assessee have successfully demonstrated with the help of the statement given during the course of search about this relation with these persons, source and bifurcation of cash belonging to these persons and their confirmation letters that sum of Rs.95,000/- (Rs.30,000 + Rs.50,000 + Rs.15,000) belonged to these persons and not to the assessee.

11. As regards the sum of Rs.1,50,000/- claimed to be owned by the assessee's wife Smt. Vandana Sharma, revenue failed to rebut the contentions of the Ld. Counsel for the assessee that in the case of Smt. Vandana Sharma the Ld.A.O has accepted the cash flow and cash in hand at Rs.1,52,144/- on the date of search and in such circumstances addition in the hands of the assessee as unexplained cash is devoid of any merits and is uncalled for.

12. As regards the remaining sum of Rs.3,17,000/- is concerned the assessee has filed the cash flow statement. No defect have been appointed out by the lower authorities in the cash flow statement. It is also brought to the notice that assessee has withdrawn Rs.7 lakhs from his savings bank account held with State Bank of India on 30.04.2009. Ld. CIT(A) has also appreciated this fact in his findings.

13. In this given facts and circumstances of the case, in our considered view cash in hand at Rs.3,17,000/- also stands explained by view of cash flow statement filed by the assessee.

14. In the result order of Ld. CIT(A) deserves to be set aside and the addition of Rs.5,62,000/- for unaccounted cash in hand needs to be deleted.

15. In the result the appeal of the assessee is allowed.

The order pronounced in the open Court on 28.02.2019.

*Sd/-*

**( V. DURGA RAO )**  
**JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 28 February, 2019

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore